

# U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## EEOC'S Strategic Enforcement Plan and Litigation Program

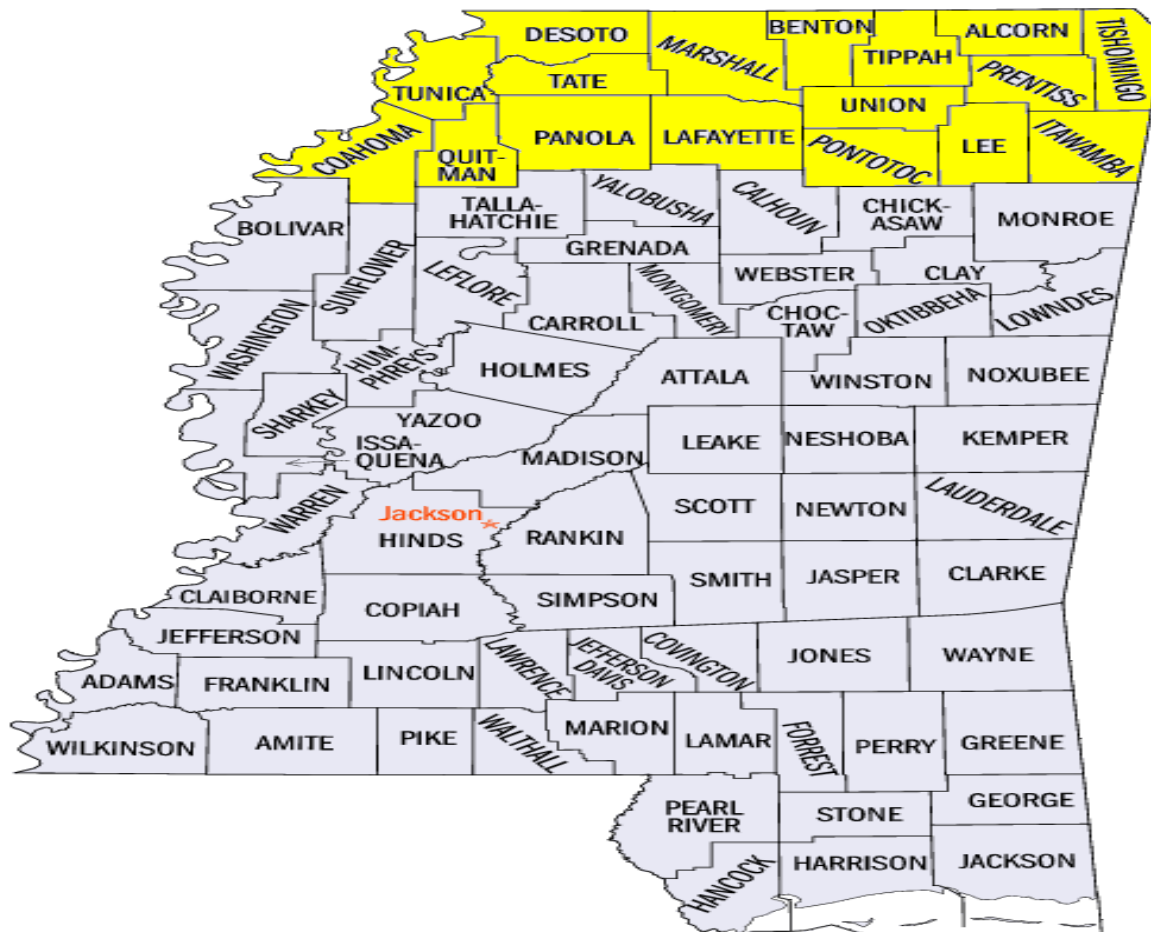
# MEMPHIS DISTRICT OFFICE JURISDICTION

- The Memphis District Office (MEDO) has jurisdiction over ;
  - Arkansas
  - Tennessee and
  - the 17 counties in Mississippi.

Litigation:

- All U.S. District Courts in the states of Arkansas, Tennessee and Mississippi.

# 17 Counties in N.D. Mississippi



# EEOC's Litigation

## Authority to Sue:

- The Commission may bring a civil action against any respondent... within 30 days after a charge is filed with the Commission..., if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission. 42 U.S.C. Section 2000e-5(f)(1).

# Litigation Under EEOC's Charge Filing Process

- Majority of the lawsuits filed by EEOC settle.
- When the cases settle, the Commission resolves the cases through the entry of a consent decree.
- The Supreme Court has recognized that “[c]onsent decrees are entered into by parties to a case after careful negotiation. The parties waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation.” *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971).

# Litigation Under EEOC's Charge Filing Process

*EEOC v. AT & T*, 3:11-cv-00196-JLH (E.D.Ark.)

- EEOC filed suit alleging that SBC discharged African American based on her race, sex, and in retaliation for her complaints about discrimination.
- After discovery, case settled;
- Consent Decree - \$30,000 back pay;
- Reinstatement;
- Training; and
- Notice posting.

# Litigation Under EEOC's Charge Filing Process

- *EEOC v. OZARKS ELECTRIC*, 5:12-CV-05014-JLH (W.D.Ark. 2012)
- EEOC filed suit under Title VII and claimed *Ozarks* denied employee a reasonable accommodation of her sincerely held religious beliefs and terminated her employment because of her religious beliefs, Jehovah Witness.
- Charging Party requested one day off to attend the Jehovah's Witness Convention. Request denied.
- Employee attends and Employer discharges employee.

# Litigation Under EEOC's Charge Filing Process

*EEOC v. Ozarks*, 5:12-CV-05014-JLH (W.D. Ark.)

- Parties completed discovery;
- Each party moved for summary judgment;
- Case settled for \$95,000 before court ruled on motions;
- Consent Decree:
  1. Modification of religious accommodation policy;
  2. Training;
  3. Reporting; and
  4. Monitoring.



# Litigation Under EEOC's Charge Filing Process

*EEOC v. Rock-Tenn Company Conway*, No. 4:08-cv-03127,  
(E.D. Ark. Aug. 1, 2011)

- EEOC filed suit claiming that Rock-Tenn violated Title VII by failing to take effective action to prevent co-worker sexual harassment of female employees.
- The parties undertook extensive oral and written discovery.
- Defendant moved for summary judgment.
- The court entered an order denying the motion.
- Case settled for \$160,000 plus entry of consent decree.

# Litigation Under EEOC's Charge Filing Process

*EEOC v. IPS Industries, Inc. d/b/a Spectrum Bags*,  
No. 2:10-cv-00168, (N.D. Miss. Nov. 20, 2012)

- EEOC sued defendant on behalf of several females for alleged sexual harassment by a supervisor.
- Discovery taken by both parties.
- Defendant moved for summary judgment.
- The Court entered an order denying summary judgment.
- The case resolved for \$150,000 plus entry of a consent decree.

# Litigation Under EEOC's Charge Filing Process

*EEOC v. Ralph Jones Sheet Metal*, No. 2:09-cv-02636  
(W.D. Tenn. April 22, 2011)

- EEOC sued defendant on behalf of several black employees alleging racial harassment by the shop foreman.
- Discovery taken by both parties.
- Defendant moved for summary judgment.
- Court entered order denying summary judgment.
- The case resolved for \$160,000 plus entry of a consent decree.

# Litigation Under EEOC's Charge Filing Process

*EEOC v. Wal-Mart*, No. 2:10-cv-00222 (E.D. Tenn.  
Dec. 16, 2011)

- EEOC sued defendant for violation of the ADAAA when it failed to provide a reasonable accommodation to a 12-year employee who had cancer surgery
- Defendant allegedly discharged the employee because of his disability;
- Little discovery taken in this case.
- The case resolved for \$275,000 plus entry of consent decree.

# Litigation Under EEOC's Charge Filing Process

*EEOC v. Dura Automotive*, No. 2:11-cv-02184, (M. D. Tenn. Aug. 31, 2012)

EEOC sued defendant, largest manufacturer of driver control systems and alleged:

- defendant conducted illegal medical examinations;
- defendant made illegal medical inquiries of its employees;
- defendant used selection criteria to screen out persons with disabilities;

# Litigation Under EEOC's Charge Filing Process

*EEOC v. Dura Automotive*, No. 2:11-cv-02184, (M. D. Tenn. Aug. 31, 2012)

- defendant failed to maintain the confidentiality of information it obtained from medical examinations;
- defendant used the information it obtained through medical inquires and examinations; and
- took adverse employment actions against more than 30 employees who tested positive for legally prescribed narcotic medication.

# Litigation Under EEOC's Charge Filing Process

*EEOC v. Dura Automotive*, No. 2:11-cv-02184, (M. D. Tenn. Aug. 31, 2012)

- Both parties moved for summary judgment;
- After numerous settlement conferences, the case settled;
- Parties agreed on a consent decree; and
- Duration of decree is four years;

# Litigation Under EEOC's Charge Filing Process

*EEOC v. Dura Automotive*, No. 2:11-cv-02184, (M. D. Tenn. Aug. 31, 2012)

Monetary payment of \$750,000 to charging party and class members;  
and enjoined defendant from:

- making illegal disability-related or medical inquiries of its employees;
- conducting employee drug screens that are not job-related and consistent with business necessity;
- illegally disclosing confidential information obtained from medical inquiries of employees; and
- taking any adverse employment action against an employee taking legally prescribed medication without making an individualized assessment of the employee's ability to perform their job.



# **EEOC APPROVES STRATEGIC ENFORCEMENT PLAN FOR FYS 2013-2016**

**Strategic Enforcement Plan approved by EEOC  
on Dec. 17, 2012.**

**Plan focuses on three objectives:**

- strategic law enforcement;
- education and outreach; and
- efficiently serving the public.

# THE STRATEGIC ENFORCEMENT PLAN

Statutory authority for the SEP, 5 U.S.C. § 306

- The SEP establishes the Commission's national enforcement priorities for Fiscal Years 2013 to 2016;
- Integrates the Commission's investigation, conciliation, and litigation responsibilities in the public and private sector;
- Adjudicatory and oversight responsibilities in the federal sector, research, policy development; and
- Education and outreach activities.

# THE STRATEGIC ENFORCEMENT PLAN

## **Criteria for Determining Priorities of EEOC:**

- Issues having broad impact because of the number of individuals, employers or employment practices affected;
- Issues involving developing areas of the law, where the EEOC's expertise is particularly salient;
- Issues affecting workers who may lack an awareness of their legal protections, or who may be reluctant or unable to exercise their rights;

# THE STRATEGIC ENFORCEMENT PLAN

## **Criteria for Determining Priorities of EEOC:**

- Issues involving discriminatory practices that impede or impair full enforcement of anti-discrimination laws; and
- Issues that may be best addressed by government enforcement, based on the Commission's access to information, data, and research.

# **SEP'S National Enforcement Priorities to Reduce Discrimination**

## **Six Priorities under SEP**

1. Eliminating Barriers in Recruitment and Hiring.;
2. Protecting Immigrant, Migrant and Other vulnerable Workers;
3. Addressing Emerging and Developing Issues;
4. Enforcing Equal Pay Laws;
5. Preserving Access to the Legal System; and
6. Preventing Harassment Through Systemic Enforcement and Targeted Outreach.

# SEP'S National Enforcement Priorities to Reduce Discrimination

## Eliminating Barriers in Recruitment and Hiring

- EEOC will target class-based intentional recruitment and hiring discrimination and facially neutral recruitment and hiring practices;
- **Affected groups:**  
racial and ethnic minorities,  
older workers,  
women, and  
individuals with disabilities.

# **SEP'S National Enforcement Priorities to Reduce Discrimination**

**Eliminating Barriers in Recruitment and Hiring  
Examples of Practices EEOC Will Seek to Eliminate  
include:**

- exclusionary policies and practices;
- channeling/steering of individuals into specific jobs due to their status in a particular group;
- Restrictive application processes; and
- Use of screening tools (pre-employment tests, background checks, date-of-birth-inquiries).

# SEP'S National Enforcement Priorities to Reduce Discrimination

## Eliminating Barriers in Recruitment and Hiring

- Example of cases to enforce SEP:

*EEOC v. Crye-Leike*, filed in E.D. Arkansas. EEOC alleged, among other

things, a failure to hire based on race;

*EEOC v. Choctaw*, filed in W.D. Tenn. EEOC alleged a failure to hire based on race, steering of African Americans into oiler position;

*EEOC v. Piggly Wiggly*, filed in M.D. Tenn. EEOC alleged a failure to hire

men and African Americans into cashier positions based on alleged customer preference. Defendant hired only females.



# **SEP'S National Enforcement Priorities to Reduce Discrimination**

## **Protecting Immigrant, Migrant and Other Vulnerable Workers**

### **Areas to Target:**

- disparate pay;
- Job segregation;
- Harassment; and
- Trafficking and other discriminatory practices

### **Why Target these Groups:**

Vulnerable workers may be unaware of their rights under the law; and may be reluctant or unable to exercise them.

# SEP'S National Enforcement Priorities to Reduce Discrimination

## Protecting Immigrant, Migrant and Other Vulnerable Workers:

Example: *EEOC v. Hamilton Growers, Inc.*, (M.D. Ga. No 7:11-CV-134-HL). Here, EEOC alleged that defendant subjected a class of American seasonal workers, many of them African-American, to discrimination based on their national origin and/or race. EEOC claimed the company discriminated against American workers by firing virtually all American workers while retaining workers from Mexico during several growing seasons. The case resolved through the entry of a consent decree for \$500,000.00.

# SEP'S National Enforcement Priorities to Reduce Discrimination

## Addressing Emerging and Developing Issues

EEOC will continue to prioritize:

- ADA and ADAAA issues such as coverage, reasonable accommodation, qualifications standards, undue hardship, direct threat;
- Accommodating pregnancy-related limitations under the ADAAA and the Pregnancy Discrimination Act; &
- Coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provision.

# SEP'S National Enforcement Priorities to Reduce Discrimination

## Addressing Emerging and Developing Issues:

### Examples:

In *Macy v. Holder*, EEOC Appeal No. 0120120821, (Apr. 20, 2012), the EEOC ruled that discrimination based on gender identity, change of sex, and/or transgender status is cognizable under Title VII. *See also* EEOC Amicus Brief in *Pacheco v. Freedom Buick GMC Truck*, No. 07-116 (W.D. Tex. Oct. 17, 2011), 2011 WL 5410751. The Commission ruled that claims by lesbian, gay, and bisexual individuals, including sexual harassment or other kinds of sex discrimination, such as adverse actions taken because of the person's failure to conform to sex-stereotypes, constitute actionable sex discrimination.

# SEP'S National Enforcement Priorities to Reduce Discrimination

## Enforcing Equal Pay Laws:

The EEOC will:

- target compensation systems and
- practices that discriminate based on gender.

To enforce this area, the EEOC will use:

- Directed investigations
- Commissioner charges

# SEP'S National Enforcement Priorities to Reduce Discrimination

## Enforcing Equal Pay Laws:

Example:

- In *EEOC v. Texas Department of Rural Affairs*, Case No. A-11-CA-827 LY, filed in U.S. District Court for the Western District of Texas, Austin Division, under the EPA, EEOC alleged defendant paid a female program analyst less wages than a male program analyst performing similar work. The court consolidated EEOC's and the Department of Justice's Title VII lawsuit. Case resolved for \$175,000 and equitable relief for three female employees.

# SEP'S National Enforcement Priorities to Reduce Discrimination

## **Preserving Access to the Legal System:**

The EEOC will target:

- policies and practices that discourage or prohibit individuals from exercising their rights under employment discrimination statutes; or
- that impede the EEOC's investigative or enforcement efforts.

# SEP'S National Enforcement Priorities to Reduce Discrimination

## **Preserving Access to the Legal System:**

### **Priority Areas:**

- Retaliatory actions;
- Overly broad waivers;
- Settlement provisions that prohibit filing charges with EEOC or providing information to assist in the investigation or prosecution of claims; and
- Failure to retain records as required by EEOC regulations.



# SEP'S National Enforcement Priorities to Reduce Discrimination

## Preserving Access to the Legal System:

### Example:

*EEOC v. Trinity Health Corporation*, D.C. IN, Case No. 3:11-CV-00309-RLM-CAN.

EEOC alleged *Trinity* had a policy of denying or delaying severance payments to current and former employees who signed severance agreements and then filed discrimination charges with the EEOC. It is unlawful for an employer to punish employees who exercise their right to file a charge of discrimination with the agency. (Even if employees sign severance agreements with their employer, they are still entitled to file a discrimination charge with the EEOC).

# **SEP'S National Enforcement Priorities to Reduce Discrimination**

## **Preventing Harassment Through Systemic Enforcement and Targeted Outreach:**

Harassment Claims based on:

- Race
- Color
- Ethnicity
- Religion
- Age
- Disability

# SEP'S National Enforcement Priorities to Reduce Discrimination

## **Preventing Harassment Through Systemic Enforcement and Targeted Outreach:**

- Harassment is one of the most frequent complaints raised in the workplace;
- Harassment claims based on race, ethnicity, religion, age and disability outnumber sexual harassment claims.

## **EEOC will target:**

- systemic enforcement and an
- outreach campaign to educate employees and employers to deter future violation.

# SEP'S National Enforcement Priorities to Reduce Discrimination

## District Complement Plans:

- SEP requires that the 15 district offices develop complementary plans.
- Six national priorities listed above may not necessarily cover all of the issues.
- Must be developed by the district director and regional attorney by March 29, 2013;
- Will complement the national priorities of the SEP;
- Recognize that particular issues most salient to these communities also demand focused attention.

# SEP'S National Enforcement Priorities to Reduce Discrimination

## District Complement Plans:

- should identify how the office will implement the SEP priorities;
- should identify local enforcement priorities, including areas for systemic investigation and litigation, and strategies for addressing them; and
- identify strategies for collaborative legal and enforcement efforts.
- must be reviewed by EEOC Chair and Commissioners to ensure that, taken together, they effectively complement national SEP priorities, according to the plan; and
- will take effect June 1, 2013, unless expressly disapproved by the Chair and Commissioners.

# Arrest and Conviction Records

- On April 25, 2012, EEOC updated its Guidance, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964
- Guidance focuses on employment discrimination based on race and national origin under Title VII.
- The Guidance clarifies and updates the EEOC's long-standing policy concerning the use of arrest and conviction records in employment, which will assist job seekers, employees, employers, and many other agency stakeholders.

# Arrest and Conviction Records

- An employer's use of an individual's criminal history in making employment decisions may, in some instances, violate Title VII.
- A violation may occur when an employer treats criminal history information differently for different applicants or employees based on their race or national origin (e.g. *EEOC v. Franke Food Service*, (MD. Tenn. 2008)).
- An employer's neutral policy may disproportionately impact some individuals protected under Title VII, and may violate the law if not job related and consistent with business necessity.

# Arrest and Conviction Records

- Two circumstances in which the EEOC believes employer will consistently meet the “job related and consistent with business necessity” defense:
  1. The employer validates the criminal conduct exclusion for the position in question in light of the Uniform Guidelines on Employee Selection Procedure (if there is data or analysis about criminal conduct as related to subsequent work performance or behaviors); or
  2. The employer develops a targeted screen considering the three factors identified by the court in *Green v. Missouri Pacific Railroad*, 549 F.2d 1158 (8<sup>th</sup> Cir. 1977).



## ***Green v. Missouri Pacific Railroad*** **549 F.2d 1158 (8<sup>th</sup> Cir. 1977).**

- *Green* Factors:
  1. The nature and gravity of the offense or conduct;
  2. The time that has passed since the offense, conduct and or completion of the sentence;
  3. The nature of the job held or sought.
- The employer then provides an opportunity for individualized assessment for those people identified by the screen, to determine if the policy as applied is job related and consistent with business necessity.
- Title VII does not require individualized assessment in all circumstances.

# **Employer's Best Practices When Considering Criminal Records and Information When Making Employment Decisions**

- Eliminate policies/practices that exclude individuals from employment based on any criminal record.
- Train managers and hiring officials about Title VII and its prohibition on employment discrimination.
- Develop a narrowly tailored written policy and procedure for screening applicants and employees for criminal conduct.
- Train managers, hiring officials, and decisionmakers on how to implement the policy and procedures consistent with Title VII.

## **CONTACT INFORMATION**

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